## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/501,701	NOSKER ET AL.	
Examiner	Art Unit	
Jeffrey C. Mullis	1796	

The MALLING DATE of this communication appears on the cover sheet with the correspondence address — THE REPLY FILED <u>O4 November 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  I. ■ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other revietnee, which places here for Continued Examination (RCE) on companions with 37 CFR 1.116. The reply must be filed within one of the following time or continued Examination (RCE) on companions with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a) ■ The period for reply exprises 2 months from the mailing date of this Advisory Action, or (2) the date set forth in the final rejection.  Examinor Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (0) WHEN THE RIRST REPLY WAS FILED WITHIN THE PRIOR THE PLY WAS FILED WITHIN THE		Jeffrey C. Mullis	1796	
1. ☑ The reply was filled after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following repless: (1) an amendment, affidative, or other evidence with 37 CFR 41.31: or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following replection.  a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.  b) ☐ The period for reply expires 3 months from the mailing date of the final rejection.  Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS Or THE FIRMA REJECTION. See WHEP 706.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee nance 37 CFR 1.17(a) is calculated from: (1) the expiration date of the sharing or decreased of the file in a control of the sharing of the sharing of the file in the file of the file replection, even from the mail patient of the file of th	The MAILING DATE of this communication appe	ars on the cover sheet with the o	correspondence add	ress
<ul> <li>1. □ The reply was filled after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidate, or other evidency, or other evidence (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following replication.</li> <li>a) □ The period for reply expires 3 months from the mailing date of the final rejection.</li> <li>b) □ The period for reply expires 3 months from the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no evert, however, with the stututory period for reply expires or: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no evert, however, with the stututory period for reply expires or: (1) the mailing date of the final rejection.</li> <li>Examiner Note: If box 1 is checked, check either box (a) or (b). CNLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS for THE FIRM REPLY WAS FILED WITHIN TWO MONTHS for THE FIRM REPLY WAS FILED WITHIN TWO MONTHS for THE FIRM REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRM REPLY WAS FILED WITHIN TWO MONTHS of the date for purposes of determining the period of reverbed and on the supportation of the firm of the date of FIRM REPLY WAS FILED WITHIN TWO MONTHS (1) of The Notice of Appeal was been determined the period of the subtraction of the date of FIRM REPLY WAS FILED WITHIN TWO MONTHS (1) of The Notice of Appeal was filed on</li></ul>	THE REPLY FILED 04 November 2009 FAILS TO PLACE THIS	S APPLICATION IN CONDITION F	OR ALLOWANCE.	
a)	1.  The reply was filed after a final rejection, but prior to or on application, applicant must timely file one of the following application in condition for allowance; (2) a Notice of Apper for Continued Examination (RCE) in compliance with 37 C	the same day as filing a Notice of A replies: (1) an amendment, affidavi al (with appeal fee) in compliance	Appeal. To avoid abar t, or other evidence, w with 37 CFR 41.31; or	hich places the (3) a Request
Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filide is the date for purposes of determining the period of extension and the corresponding amount of the .The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked, Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  MOTICE OF APPEAL  2. The Notice of Appeal was filed on	a) The period for reply expires 3 months from the mailing date b) The period for reply expires on: (1) the mailing date of this Ar no event, however, will the statutory period for reply expire la Examiner Note: If box 1 is checked, check either box (a) or (l	dvisory Action, or (2) the date set forth hter than SIX MONTHS from the mailing b). ONLY CHECK BOX (b) WHEN THE	g date of the final rejection	n.
<ul> <li>2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37(a), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</li> <li>3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);</li> <li>(b) ☐ They raise the issue of new matter (see NOTE below);</li> <li>(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</li> <li>(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.</li> <li>NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).</li> <li>4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</li> <li>5. ☐ Applicant's reply has overcome the following rejection(s):</li> <li>6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s) is (or will be) as follows: Claim(s) objected to:</li> <li>Claim(s) objected to:</li> <li>Claim(s) objected to:</li> <li>Claim(s) objected to:</li> <li>Claim(s) withdrawn from consideration:</li> <li>AFFIDAVIT OR OTHER EVIDENCE</li> <li>8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 41.37(a).</li> <li>10. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior</li></ul>	have been filed is the date for purposes of determining the period of extunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b).	ension and the corresponding amount of hortened statutory period for reply origi	of the fee. The appropria nally set in the final Offic	ate extension fee e action; or (2) as
(a)	<ol> <li>The Notice of Appeal was filed on A brief in completing the Notice of Appeal (37 CFR 41.37(a)), or any exter Notice of Appeal has been filed, any reply must be filed with the second se</li></ol>	sion thereof (37 CFR 41.37(e)), to	avoid dismissal of the	
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).  4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. ☐ Applicant's reply has overcome the following rejection(s):  6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  7. ☑ For purposes of appeal, the proposed amendment(s): a) ☑ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows: Claim(s) allowed:	3. The proposed amendment(s) filed after a final rejection, be (a) They raise new issues that would require further cor (b) They raise the issue of new matter (see NOTE below (c) They are not deemed to place the application in better	nsideration and/or search (see NOT w);	ΓE below);	
5.  Applicant's reply has overcome the following rejection(s):	(d) They present additional claims without canceling a continuation Sheet. (See 37 CFR 1.1.1)	16 and 41.33(a)).		
non-allowable claim(s).  For purposes of appeal, the proposed amendment(s): a) \( \) will not be entered, or b) \( \) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:  Claim(s) objected to:  Claim(s) rejected: see FINAL rejection.  Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE  8. \( \) The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9. \( \) The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. \( \) The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11. \( \) The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.  12. \( \) Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)	5. Applicant's reply has overcome the following rejection(s):	·		ŕ
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Continuation of 3. NOTE: Applicants newly added limition was not previously present and would therefore require further consideration and search..